ILLINOIS POLLUTION CONTROL BOARD

June 26, 1975

CITIZENS FOR A BETTER ENVIRONMENT, Complainant, v. NORTH ELMHURST SANITARY DISTRICT, a Municipal Corporation, and CITY OF ELMHURST, a Municipal Corporation, Respondents.	)	PCB 74-285

Mr. Dennis L. Adamczyk, Director of Environmental Research and Mr. Sherwood L. Levin, Attorney, appeared for Complainant;
Mr. James F. Whitfield, Attorney, appeared for North Elmhurst Sanitary District;
Mr. Peter W. Ernst, Attorney, appeared for the City of Elmhurst.

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

This action was filed by Complainant Citizens For A Better Environment (CBE) against the North Elmhurst Sanitary District (District) on July 31, 1974. An amended Complaint which named the City of Elmhurst (City) as Respondent, together with the North Elmhurst Sanitary District, was filed on October 10, 1974.

The North Elmhurst Sanitary District owns a sewage treatment plant located at Eastland and North End, Elmhurst, DuPage County, Illinois. The City of Elmhurst furnishes labor and material for the operation of the plant, and has done so since July, 1971. The design capacity of the plant is .35 million gallons per day, and the average dry weather flow is .5 million gallons per day.

When the flow into the plant exceeds .75 million gallons per day, sanitary wastewater is bypassed to the polishing lagoon for retention (R. 7,8) and is chlorinated before discharging to Addison Creek. The major cause of the excessive flows is due to infiltration into the sewer system, which is very difficult to prevent and to pinpoint.

Complainant charges that:

1. Subsequent to January 6, 1972 and up to the date of the complaint, after heavy rainfalls, Respondents caused or allowed the overflow of raw sewage wastes into basements and streets of Elmhurst in such a manner as to cause or tend to cause water pollution in violation of Sec. 12(a) and 12(d) of the Environmental Protection Act (Act). Ill. Rev. Stat., Ch. 111 1/2, Sec. 1012(a),(d)(1973); (Amended Complaint Count I, Paragraph 5).

2. Subsequent to January 6, 1972, Respondents operated the sewer treatment plant in such a manner that the maximum practicable flow is not conveyed to the treatment facility, thus causing or allowing the existence of raw sewage overflows from the sanitary sewers, such occurrences constituting a violation of Rule 602(b) of Chapter 3, Water Pollution, of the Pollution Control Board Regulations, (Regulations); (Amended Complaint Count I, Paragraph 6).

3. Subsequent to June 30, 1974, Respondents caused or allowed the use and/or operation of said existing treatment works, which has a population equivalent of under 10,000 with at least 60% of the loading being sewage, without a permit having been issued by the Agency, in violation of Rule 903(c)(3) of the Regulations; (Amended Complaint Count I, Paragraph 7).

4. Subsequent to January 6, 1972, including but not limited to July 23 and 25, 1974, Respondents operated the sludge drying beds and/or the polishing pond of the sewage treatment plant in such a manner as to frequently and periodically cause or allow the emission of odors into the ambient atmosphere of the area surrounding the sewage treatment plant, so as to cause or tend to cause air pollution, in violation of Section 9(a) of the Act. Ill. Rev. Stat., Chapter 111 1/2, Sec. 1009(a)(1973)(Amended Complaint Count II, paragraph 2).

A hearing was held February 5, 1975 at Elmhurst, Illinois. CBE brought 7 citizen witnesses to testify at that hearing. A Mr. Gentile testified that he lived about 1/2 block from the retention pond, and that whenever the wind was from the west he smelled an odor of human waste, which was stronger in the summer than in the winter (R. 47,48). He stated that the odor was strong enough so that he could not use his backyard when the wind was from the west, and that this would happen about twice a week (R. 48).

Antoinette Johnson testified that she has quite frequently smelled the odors in question, on the average about 3 times a week, especially after rains (R. 60). She has a pool in her yard, and has had to cancel pool parties and take people indoors. She experienced this odor 3 or 4 times a week in the summer time, and less often in other seasons (R. 61). She definitely identified the odors as coming from the

plant. She also complained to the Elmhurst Dept. of Public Works (R. 63), but no improvement was noticed.

Lillian Zanibetta has resided at her present address near the plant for 3 years. She has suffered from odors repeatedly, and identified them as coming from the drying beds (R. 70), the polishing pond and the plant (id). Odors occurred an average of once or twice a week, and on weekends (R. 71). Complaints were made to the City of Elmhurst (R. 71). Her activities, she stated, were severely restricted by the odors (R. 72).

Kathleen Priester lives close to the other citizen witnesses and essentially provides the same testimony as the others; i.e., there are odors of human wastes, use of her yard is restricted, and this occurs several hundred times a year (R. 78,79).

Mr. Salaway lives in one of the same groups of houses as the others and substantially confirms the testimony of the others (R. 86,87,88,89). When he bought the house he was told the Treatment Plant was a water filtration plant (R. 87). He has suffered from the odor between 10% and 20% of the time in summer. The rest of the year was not nearly as bad (R. 87).

Kathleen Evanson, another citizen witness, substantially confirmed the testimony of the previous witnesses (R. 91-96).

The parties also introduced two Stipulations of Facts at the February 5, 1975 hearing. The first of these, applying only to Respondent North Elmhurst Sanitary District, admits that subsequent to June 30, 1974, the District owned and allowed the operation of the treatment works in issue here, without the operating permit from the Agency required under the Board's Regulations.

The second, more lengthy Stipulation of Facts was signed by Complainant CBE and Respondent City of Elmhurst; Respondent North Elmhurst Sanitary District accepted and signed this second Stipulation with certain exceptions made orally in the record. In substance, however, this latter Stipulation admits on the part of both Respondents that sewage was inadequately treated and bypassed during periods of excess flow, and that the operation of the sewage treatment plant resulted in "the emission of malodors into the ambient atmosphere of the area surrounding the...plant, so as to cause or tend to cause air pollution in the immediate proximity... (Stip. para. 6).

Although the North Elmhurst Sanitary District claims that certain of these admissions may be beyond the direct knowledge of that District, we find that they are material to the Board's determination of whether the District violated the Act and the applicable Regulations by allowing such violations to occur. Insofar as we find that the District is charged, as owner of the plant, with a duty to be aware of violations at the plant, and that it is liable for violations allowed in the face of that duty, these admissions are indeed central to our determination here. See, EPA v. City of Champaign, PCB 71-51c, 2 PCB 411, 429 (1971) (duties of sewer owners); City of Mattoon v. EPA, PCB 71-8, 1 PCB 441, 444 (1971)(reliance on consultants-treatment works construction); Spartan Printing Co. v. EPA, PCB 71-19, 2 PCB 19, 25 (1971)(reliance on others). See Also EPA v. Harshany, Inc., PCB 72-151, 6 PCB 89, 90, 92 (1972)(duties of landowner).

The basic problem is that the capacity of the plant is insufficient. The installation consists of a Walker Package Plant using the contact stabilization process, a waste stabilization pond, and drying beds. The design capacity is 350,000 gpd; the average dry weather flow is 500,000 gpd. When the flow exceeds 750,000 gpd., by-passing takes place, which means that the polishing pond is now used as a raw sewage reservoir, with the consequences testified to by the citizen witnesses. The polishing pond's capacity is between 0.5 and 1.0 million gallons; excess beyond that storage passes over a spillway and into Addison Creek (R. 30).

It is obvious that the plant has insufficient capacity to treat the dry weather flow, let alone the flow during periods of rainfall. The plant has been in service since at least 1971, although the record does not show when the plant was installed. We also infer, from the citizen testimony, that the plant was in service when the witnesses moved into their present houses. Respondents allege that the overloading of the plant was compounded by the issuance of a permit by the Agency to a 115 unit apartment house, allowing connection to the North Elmhurst Sanitary District sewers, and thus causing about a 10% increase in loading on the Treatment Plant.

It is impossible for us, with the present record, to decide at this time whether the District was at fault originally for installing a plant which later proved to be inadequate. There is no doubt, though, that the plant is presently inadequate.

However, the City of Elmhurst, which has been operating the plant under contract with North Elmhurst Sanitary District, has been planning for three years to phase out the plant and install a pumping station and force main which would convey the sewage to the City of Elmhurst Sewage Treatment Plant. This is by far the best solution to the problem, since it would eliminate the polishing pond, drying beds, and the inadequate Walker Package Plant. This should eliminate all odors and overflows of incompletely treated sewage.

We note that two separate contracts have been awarded, one for the installation of the force main, the other for the installation of the pumping station. While the contract completion dates are July 13, 1976 for the pumping station and May 20, 1975 for the force main, Mr. Borchert, Director of Public Works for the City of Elmhurst holds out very strong hope that the completion date could be some time in January, 1976, if deliveries are favorable. In any case, full relief should occur by July, 1976. (Res. Ex. 2-City of Elmhurst). The infiltration problem is being solved by installation of a 2 mgd capacity pumping station which apparently will be sufficient to prevent overflows in the future.

The existing waste stabilization pond will be abandoned and covered with one foot of fill material as a part of the contract. The City of Elmhurst Department of Public Works will fill the pond to match existing ground levels after the contractor finishes his work. The existing contact stabilization tank will be stripped of all equipment and piping. The walls will be removed to an elevation of 24 inches below existing grade and the tank filled with structural fill material. The existing control building is to be removed and the drying beds are to be abandoned and filled to meet the adjacent ground elevations.

Complainant has withdrawn the charge contained in Paragraph 5 of Count I (R. 106), charging Respondent with causing or allowing the overflow of raw sewage wastes into basements and streets in Elmhurst. Complainant failed to prove Paragraph 6 of Count I, charging a failure to have maximum practicable flow conveyed to the treatment facility. Complainant offered no evidence that maximum practicable flow was not conveyed to the treatment facility. It was stipulated that the flow is by-passed to the polishing lagoon (pond) after it exceeds .75 mgd., which is apparently the hydraulic capacity of the treatment plant (R. 7).

Paragraph 7 of Count I charges operation of the Sewage Treatment Plant without a permit, in violation of Rule 903(c) (3) of Chapter 3, Part 9 of the Water Pollution Regulations. The permit should have been acquired by June 30, 1974. On August 22, 1974, an attorney for the Agency wrote the North Elmhurst Sanitary District, that it had until October 1, 1974 to file its permit application (R. 125). The permit was applied for on September 24, 1974.

We find that both the North Elmhurst Sanitary District and the City of Elmhurst relied on each other to fulfill the permit requirements. They were both clearly in violation of Rule 903(c)(3) of Chapter 3, from July 1, 1974 to August 22, 1974, when the permit application letter described above was sent by the Agency. Insofar as the Agency is the authority charged under our Regulations with the administration of the permit system, we find that Respondents properly and detrimentally relied on that letter during the period after August 22, 1974. For that reason, we find that the Respondents are not chargeable with a violation of 903(c) during that period.

We accept the pleadings in Respondent's Reply Brief by the North Elmhurst Sanitary District that failure to obtain a permit was by inadvertance. "The inadvertance referred to was the assumption---that the City of Elmhurst did have---or had applied for an operating permit pursuant to the rule. The opposite of this---is that the City of Elmhurst could have presumed that the North Elmhurst Sanitary District held or had applied for the necessary permit". (Reply Brief, pp. 2,3). We find that this inadvertant failure was no threat to the permit system, although in fact a violation. Nor, we note, is an operating permit, other than that required under the NPDES program, now required for Respondents' treatment plant. Therefore, we will impose no penalty.

Nor do we feel that a penalty is called for by the odor violations found here. As stated above, the Respondents in this matter have opted for a final compliance plan which we feel will provide the best solution for the problems which have existed at this treatment plant. When the pumping station has been completed, the odor problem will have been completely abated. Further, in light of the fact that the Respondents here are governmental bodies, we feel that the facts here indicate that any possible penalty monies would be better spent in that abatement project. In reaching that decision, we hope that the Respondents understand that the Board expects expeditious action in the completion of the pumping station.

The bypassing of the raw sewage to the polishing pond unquestionably resulted in a violation of Sec. 9(a) of the Act because of the odors generated. From the testimony of the citizen witnesses described above, all of whom lived adjacent to the plant site, the suffering of injury and inconvenience from odors originating at the plant cannot be doubted. We can see only two solutions to this problem; either 1) increase the capacity of the installation to about 1 mgd or more, or 2) eliminate the treatment plant entirely. Respondent, City of Elmhurst has decided to eliminate the plant entirely, and install a force main and pumping station to convey the sewage to its larger plant, which is a permanent installation.

In reaching these conclusions, we have thoroughly considered the reasonableness of Respondents' odor emissions, including the factors enumerated in Section 33(c) of the Environmental Protection Act.

1. As our discussion above clearly shows, the character of the emissions from the sewage treatment plant were such as to seriously interfere with the normal enjoyment of life and property, particularly insofar as those emissions affected the citizen witnesses who presented testimony at the hearings in this matter.

As regards the permit violation, the necessity of the permit system has often been discussed by the Board. The potential for injury is too great for the Board to ignore even inadvertent violations such as that found here.

2. The social and economic value of a properly operated sewage treatment plant need not be explained here. But when these plants are improperly operated or overloaded, as we have found was the case here, they in part lose their value; instead of abating pollution, as is their function, they in fact become a pollution source. While the value of such pollution source here is high, if properly operated within its capacity, it is clear that the sewage plant at issue here should not even have been such a source. That high value, further, is enhanced and ensured by the permit system. Indeed, the social and economic value of all treatment plants is increased by the permit system; finding a permit violation here can in no way decrease such value.

3. The priority in location of a sewage treatment plant starts,for purposes of determining an odor violation, only from the date at which the plant becomes a source of odors. Further, this Board has in the past noted that priority in location does not, and cannot, constitute a permanent license to pollute. It is patent that an improperly operated or grossly overloaded treatment plant is unsuitable to any area. By the nature of our findings here, we need

not consider whether a properly run plant with suitable capacity would be appropriate to the area in question.

4. As is plain from the remainder of our Opinion, there is clearly an adequate remedy for the problem, which is now being implemented by the Respondents.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

IT IS THE ORDER OF THE BOARD that:

1. Respondent City of Elmhurst is found to have operated the North Elmhurst Sanitary District Sewage Treatment Plant in violation of Section 9(a) of the Environmental Protection Act.

   a. The City of Elmhurst shall cease and desist from such violation not later than July 13, 1976. It shall also pursue every means at its disposal to have the contracts for force main and pumping station construction, described in the accompanying Opinion, completed with all due haste.

   b. The City of Elmhurst shall make every effort, including liming and chlorination, to abate odors from the drying beds and polishing pond of the North Elmhurst Sanitary District sewage treatment plant.

2. Respondent North Elmhurst Sanitary District is found to have caused or allowed the operation of the North Elmhurst sewage treatment plant in violation of Section 9(a) of the Environmental Protection Act.

   a. Respondent North Elmhurst Sanitary District shall cease and desist such violation not later than July 13, 1976, and shall use every means at its disposal to assist Respondent City of Elmhurst in efforts to achieve compliance.

3. The City of Elmhurst and the North Elmhurst Sanitary District are found to have violated Rule 903(c)(3) of Chapter 3: Water Pollution from July 1, 1974 to August 22, 1974.

4. Paragraph 5, Count I of the Amended Complaint is dismissed on motion of Complainant.

5. Paragraph 6 of Count I is dismissed for lack of proof.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order were adopted on the 26th day of June, 1975 by a vote of 4 to 0.

Christan L. Moffett (gn)
Christan L. Moffett, Clerk
ILLINOIS POLLUTION CONTROL BOARD